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FISCAL IMPACT STATEMENT

LS 6725

BILL NUMBER: SB 268

NOTE PREPARED: Feb 13, 2003

BILL AMENDED: Feb 10, 2003

SUBJECT: Help America Vote Act Compliance.

FIRST AUTHOR: Sen. Skillman

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☒ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: The bill makes numerous changes in Indiana Election Law in response to the Help America Vote Act (HAVA) of 2002. The changes affect the following:

- (1) Election administration structure and procedures.
- (2) Voter registration procedures including establishment of a statewide voter registration file.
- (3) Acquisition, accessibility, and operation of new voting systems.
- (4) Voter identification.
- (5) Provisional ballots.

The bill directs state officials to make certain applications and certifications required by HAVA. The bill appropriates money received by the state under HAVA for the purposes permitted by HAVA. The bill reappropriates money appropriated from the Build Indiana Fund (BIF) during the 2001 legislative session for voting systems to the Election Administration Assistance Fund (EAAF) to provide the state match to Federal funds required by HAVA. The bill provides that if the BIF funds are insufficient to provide match for Federal funds, the additional required match is appropriated from the state General Fund. The bill repeals obsolete statutes relating to the statewide voter registration file and the Voting Systems Improvement Fund (VSIF) and the Voting Systems Education Fund (VSEF).

Effective Date: Upon passage; July 1, 2003.

Summary of Net State Impact: The following table details the net impact to Indiana under this bill due to additional federal funds that if appropriated by the Federal Government could become available and the required state matching funds needed for 42 USC (HAVA):

Table A. Net State Impact:

	FY 2004	FY 2005	FY 2006
State Revenue	\$26.2 M - \$49.4 M	\$5 M - \$21.6 M	\$3 M - \$12.9 M
State Expenditures (see Five Percent State Match)	up to (\$1.6 M)	up to (\$1.1 M)	up to (\$0.68 M)
Net State Impact (assuming full five percent state match is appropriated)	\$24.6 M - \$47.8 M	\$3.9 M - \$20.5 M	\$2.3 M - \$12.2 M

Explanation of State Expenditures: Office of the Secretary of State- The bill would require the Office of the Secretary of State (SOS) to increase their administrative responsibilities, which may require additional staff. As an example, if an additional PAT 1 position were required to coordinate college and highschool pollworker recruitment programs and/or administer the EAAF created by the bill, the expenditures would be \$51,390 in FY 2004 and \$51,575 in FY 2005. Expenses for administering the EAAF would be paid from the Section 101 account of the Fund (See *Election Administration Assistance Fund*.)

Background: As of February 4, 2003, the SOS had 67 employees with three on leave, 59 full-time, one intermittent, one temporary, and three part-time.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Election Division's Responsibilities- The bill would require the Election Division to incur additional administrative duties including development of the Statewide Voter Registration List (SVRL) and the coordination with various state agencies to insure the accuracy of the list. The Division would be required to carry out the state's responsibilities and provide information regarding voter registration and absentee ballot procedures for absent uniformed or overseas voters. The Division would be required to study military and overseas voter matters and report findings and suggestions to the Census Data Advisory Committee. The Election Commission would be required to adopt rules concerning absentee ballot forms. The Election Division would be required to provide an adequate amount of mail-in registration forms to any office or entity. In order to reduce costs, the Division must publicize such forms on their website.

Election Administration Assistance Fund (EAAF)- The bill establishes the EAAF as a replacement for the Voting System Improvement Fund. The EAAF would be used to (1) carry out activities to improve the administration of elections for Federal office; (2) reimbursement of costs to obtain voting equipment that complies with Federal Law, if obtained by the state after November 7, 2000; (3) reimbursement of costs to obtain voting equipment that complies with Federal Law under a multi-year contract incurred after December 31, 2000; (4) to reimburse counties for the purchase, upgrade, or expansion of a voting system that do not qualify under (2) or (3).

The EAAF would consist of (1) money appropriated by the General Assembly, including appropriations from the Build Indiana Fund (BIF); (2) all money allocated to the state under 42 USC 15301, 15302, and 15408. (Sections 101, 102 and Title II, Subtitle D, Part I of HAVA) & money allocated by the Federal Government under any other program for the improvement of election administration; (3) proceeds of bonds issued by the Indiana Bond Band (IBB) for improvement of voting systems. The Auditor of State would establish an account within the fund for money appropriated by the General Assembly and accounts for each Federal allocation listed above. Proceeds of bonds from the IBB may be deposited into any account of the EAAF. The SOS would administer the EAAF. Expenses for administering the EAAF would be paid from the Section 101 account.

Use of the Federal Grants- Under the bill, grants received under Section 101 of HAVA would be used to reimburse counties for new voting systems at \$4,000 per precinct purchased after December 31, 2000 and cannot be replaced under Section 102 of HAVA. For counties required to meet HAVA requirements, the grant would be 50% of the purchase price of the voting system. Grants from Section 101 may also be used for any other purpose authorized by the bill and Section 101 of HAVA. Grants from Section 102 of HAVA can only be used to reimburse counties specifically replacing either a punch card or lever machine voting system with an approved system purchased after December 31, 2000. A county may be reimbursed by not more than \$4,000 per each precinct employing either a punch card or lever machine voting system during the 2000 general election.

Background: P.L. 239-2001 established the Voting System Improvement Fund (VSIF) to reimburse counties for the purchase, lease purchase, lease, upgrade, or expansion of existing voting systems. As of October 2002, neither state nor Federal funds have been appropriated/deposited into the VSIF. Counties have applied for reimbursement, in case of future availability of money in the VSIF.

As of the 2002 General election, there are approximately 3,110 Indiana precincts and approximately 2,440 polling places that currently employ either punch card or lever machine voting systems.

Statewide Voter Registration List- The bill requires, under 42 USC 15483 (SEC 303 of HAVA) that by January 1, 2006 the SOS must implement the SVRL. The Statewide Voter Registration File (SVRF) was established by P.L. 199-2001 to accurately tabulate the voter registration in the state. The SVRL would replace the efforts of the implementation of the SVRF after December 31, 2005. P.L. 291-2001 appropriated \$5 M from the Build Indiana Fund (BIF) for the implementation of the SVRF. However, the appropriation has not allocated to date due to BIF transfers to the state General Fund for deficit management. The bill cancels the appropriation from P.L. 291-2001 and re-appropriates the \$5 M from BIF to the EAAF for the purpose of developing the SVRL *and complying with 42 USC 15403 (Section 253(b) of HAVA Requirements Payments)*. This provision is considered expenditure neutral.

FIVE PERCENT STATE MATCH- In order to receive Federal funds under 42 USC 15403 (Title II Subtitle D Section 253 of HAVA), the state must appropriate a five percent match of the total amount spent for activities required under HAVA. The estimated 5% match would be approximately **\$1.6 M** in FY 2004, **\$1.1M** in FY 2005 and **\$680,000** in FY 2006. *To the extent that the \$5 M appropriation from BIF, explained below under the Statewide Voter Registration List, cannot cover the five percent state match, the bill makes an appropriation sufficient to cover the difference.*

The following table lists the requirements necessary to receive the Federal funds under 42 USC 15403 (Section 253 of HAVA):

Table B. HAVA Section 253 Requirements:
A. Indiana must file a plan to the Federal Election Assistance Commission (FEAC) including details of Indiana financial (appropriations and expenditures) and administrative (monitoring of Federal monies distributed, establish fund to receive revenue) efforts to comply with Title III of HAVA including Federal voting machine, provisional voting and voter education standards.
B. Indiana must file another plan to FEAC to implement a uniform nondiscriminatory administrative complaint procedure. A complaint procedure plan may be filed with the plan outlined under A.
C. Indiana must be in compliance with the following Federal Acts: Voting Rights Act of 1965 (42 USC 1973ee et seq), Voting Accessibility for the Elderly and Handicapped Act (42 USC 1973ee et seq), The Uniformed and Overseas Citizens Absentee Voting Act (42 USC 1973ff et seq), The National Voter Registration Act of 1993 (42 USC 1973gg et seq), The Americans with Disabilities Act of 1990 (42 USC 12101 et seq), The Rehabilitation Act of 1973 (29 USC 701 et seq)
D. Indiana must demonstrate how the state will use funds for purposes other than implementing Title III of HAVA, in the submitted proposal. Indiana must also certify that all Title III requirements have been met, and the amount of proposed non-Title III expenditures does not exceed \$7 M in FY 2004, \$5 M in FY 2005, and \$3 M in FY 2006.
E. Indiana appropriates a 5% match of Federal funds appropriated under sec 253 of Federal HAVA as listed above.

State Purchase of Voting Systems- The bill would give the SOS the authority to directly purchase voting systems for counties. If the SOS chose to do so, counties could be furnished machines purchased by the SOS.

State Match for Voting Systems- The bill also adjusts the matching funds the state would pay to a county applying for reimbursement for the purchase, lease-purchase, or lease of new voting systems. Under current law, the state must provide a match of 50% of the purchase price of a new voting system or the upgrade or expansion of an existing voting system, with approval of the Budget Agency. Under the bill, the 50% match would only applicable to counties that purchased, upgraded, or expanded a voting system after December 31, 1997, and received approval by the Budget Agency. A 25% match would be applied to the purchase price of a purchased, upgraded, or expanded voting system after November 5, 1996 and before January 1, 1998. The same percentage would apply to counties for lease and lease-purchase of a voting system after November 5, 1996 and before January 1, 1998. One vendor's QPA would require a per unit price of \$2,945 to \$6,300 for voting machines depending on the amount purchased. Another QPA guarantees a base per unit price of \$4,600 per voting machine. Based on these vendor's prices, a 25% match would be \$750 to \$1,625 per machine and a 50% match would be \$1,500 to \$3,250 per machine.

P.L. 291-2001 appropriated \$4 M from the Build Indiana Fund (BIF) for the implementation of the state matching grants. However, the appropriation has not allocated to date due to BIF transfers to the state General Fund for deficit management. The bill cancels the appropriation from P.L. 291-2001 and re-appropriates the \$4 M to the EAAF for reimbursement of voting system purchases to counties that do not qualify for reimbursement under HAVA. This provision is considered expenditure neutral.

Background: Under current law, the Department of Administration (IDOA) is required to enter into Quantity Purchase Agreements (QPA)s with vendors of voting machine equipment. IDOA has entered into QPAs with

four vendors. Two of these vendors offer volume discounts on voting machines. The State is currently not purchasing voting machines for counties.

State Plan Advisory Committee- The bill establishes the State Plan Advisory Committee. The Committee would be required to help the Co-Directors of the Election Division to develop the state plan under 42 USC 15404 (Section 254 of HAVA.) All members would be entitled to reimbursement for travel and other expenses incurred involving the member's duties with the SVRAC. Up to eight members, given they are not either state or local government employees, would be eligible for salary per diem per meeting. SVRAC expenses would be paid with revenues received under 42 USC 15301 (Section 101of HAVA).

Class D Felony- A repeat offender that has previously committed an infraction for illegally granting voter registration information commits a Class D Felony. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$25,087 in FY 2001. Individual facility expenditures ranged from \$18,520 to \$54,465. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually or \$5 daily per prisoner. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: Federal Grants under HAVA- Under HAVA, the state could receive between \$34.5 M and \$84.5 M from Federal grants, including any additional grants (see Table D below) for disabled voting improvements that the state may qualify for over FY 2004- FY2006. The above range is tentative and depends on the amount of authorizations actually appropriated/dispensed by the Federal Government to Indiana. The following tables illustrate the revenue that may be received by the state.

Infraction- Under this bill, a person granting a request for voter registration information with knowledge that the information would be used in a prohibited manner, would commit a Class B infraction. If additional court cases occur, revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class B infraction is \$1,000 which is deposited in the state General Fund. If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed. 70% of the court fee would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Class D Felony- A repeat offender that has previously committed an infraction for illegally granting voter registration information commits a Class D Felony. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Table C. Grants Available Under HAVA

HAVA Grant Description	FY 2004	FY 2005	FY 2006
42 USC 15301 (Section 101) (For complying with Title III including voter ed, voting system improvement, & establishing toll-free numbers)	\$6.8 M		
42 USC 15302 (Section 102 b & c.) (To replace LEVER and PUNCHCARD voting systems)	\$12.4 M		
42 USC 15402, 15403, 15407 (Sections 252, 253 and 257.) (Requirements Payments to IN)	\$7 M - \$30.2 M	\$5 M - \$21.6 M	\$3 M - \$12.9 M
INDIANA TOTAL	\$26.2 M - \$49.4 M	\$5 M - \$21.6 M	\$3 M - \$12.9 M

Table D. Competitive Grants Available Under HAVA

HAVA Grant Description	FY 2004 (U.S. Total)	FY 2005 (U.S. Total)	FY 2006 (U.S. Total)
42 USC 15421 - 15425 (Sections 261- 265.) (Disabled voters grant. Payment determined by US Health & Human Services. May be received by a State or local unit of government.)	\$50 M	\$25 M	\$25 M
Voting Technology Improvement. May be awarded to "eligible" entities	\$20 M		
Testing equipment/technology. May be awarded to "eligible" entities	\$10 M		
U.S. TOTAL	\$80 M	\$25 M	\$25 M

Federal Law does not specify the amount of funding that Indiana may receive under 42 USC 15421 - 15425 (Sections 261-265 of HAVA). The SOS must apply to the US Health and Human Services Agency (USHHSA) for grants under these sections. Federal grants awarded under these sections would be determined by the Secretary of USHHSA. Funds can be applied for and received by **both state and local government** entities: see *Explanation of Local Revenues*. Total US authorizations are \$50 M in FY 2004, \$25 M in FY 2005, and \$25 M in FY 2006.

NOTE: *As of the date of this fiscal impact statement, the Federal government has neither appropriated nor disbursed any funding authorizations under HAVA to Indiana.*

Explanation of Local Expenditures: Summary: Under the bill, various additional responsibilities would be required by county voter registration offices, county election boards, the circuit court clerk, precinct

election boards, and local health officials that could increase the administrative staff time and expenditures to these offices. In particular, the bill, would require county voter registration offices to maintain the Statewide Voter Registration List. This provision would require counties to have Internet access. The bill would also require notification by either first class or certified mail to the required parties regarding voter accessibility complaints. Mailings to voters registered by mail would be required to request additional information including encouraging submission of photocopies of required documentation. The optical scan county election boards would also be required to establish a voter education program for multiple ballots for a single office. The impact of these provisions is indeterminable and would depend on the county.

Voting System Accessibility- The bill would require each county to have disabled voter accessibility on at least one voting machine per precinct by January 1, 2006. Under Federal regulations, disabled voting areas would be required to have wheelchair access, and various audio and enhanced visual instructions for the operation of the voting system. The estimated impact to local expenditures is currently indeterminable. *This fiscal impact statement will be updated when additional information is available.*

Voter's Bill of Rights- Under the bill, additional items would be placed in the voter's bill of rights. The additional items would slightly raise the printing costs associated with producing copies. The changes must be added by January 1, 2004.

Information Submission- County election boards would be required to assist the Election Division in compiling information on uniformed and overseas absentee ballots to the Federal Election Assistance Commission. The provision could require additional administrative time for county election boards to accomplish.

Internet/Toll-Free Number- County election boards would be required to establish a toll-free telephone number of an Internet web site for provisional voters. Federal grants under Section 101 of HAVA, could be used for establishing voter toll-free telephone numbers.

Class D Felony- If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Background: U.S. Postal Service rates for certified mail are \$2.30 plus \$0.37 for first class postage or, if sent by priority mail, \$3.85 per envelope. A return receipt is \$3.00.

Approximately 37 Indiana county governments have limited or no Internet access.

Explanation of Local Revenues: Receipt of Federal Grants- If a county election board receives payments from the USHHS for disabled voter access (42 USC 15421), the grants are to be deposited into the county general fund and appropriated to the county election board to carry out the provisions of the application to the USHHS. County election boards would be required to file a report to the USHHS conveying the activities and expenditures made of any grants received.

Infraction: If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be

deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

Class D Felony- If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Office of the Secretary of State; Indiana Election Division; Auditor of State; State Budget Agency; Department of Health; Department of Correction; Bureau of Motor Vehicles; Department of Administration.

Local Agencies Affected: County voter registration offices, county election boards, circuit court clerks, and precinct election boards; county and municipal health officials; Trial courts, local law enforcement agencies.

Information Sources: Indiana Election Division; State Budget Agency; Association of Indiana Counties; US Census Bureau; Department of Administration; 42USC 15301- 15544; US Postal Service, www.usps.com/consumers/domestic.htm; Indiana Sheriffs Association, Department of Correction.

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